
United States
Circuit Court of Appeals

For the Ninth Circuit.

BYRON J. DOLPHIN, sometimes known as B. J.
DOLPHIN and DOLPHIN'S NATURAL
BARKS,

Appellant,

vs.

GEORGE E. STARR, United States Postmaster at
Seattle, King County, Washington,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Western District of Washington,
Northern Division.

JUN 24 1942

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

EDGAR S. HADLEY, Esq.,
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Seattle, Washington,
Attorney for Appellant.

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United States Attorney,
1012 U. S. Court House,
Seattle, Washington,
Attorney for Appellee.

GERALD SHUCKLIN, Esq.,
Assistant United States Attorney,
1012 U. S. Court House,
Seattle, Washington,
Attorney for Appellee.*

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for
the Western District of Washington, Northern
Division

No. 429

BYRON J. DOLPHIN, sometimes known as B. J.
DOLPHIN, and DOLPHIN'S NATURAL
BARKS,

Plaintiff,

vs.

GEORGE E. STARR, United States Postmaster at
Seattle, King County, Washington,
Defendant.

COMPLAINT

Comes now the Plaintiff, and for cause of action
against the Defendant, alleges as follows:

I.

That Byron J. Dolphin, sometimes known as B. J. Dolphin, the manufacturer of Dolphin's Natural Barks, is a native born citizen of the United States of America and a resident and citizen of the State of Washington, residing at Seattle, King County, Washington.

II.

That some years last past, the Plaintiff discovered a formula for the treatment of diseases of the eye, which has been known as Dolphin's Natural Barks, and since the discovery thereof, he has been engaged in the manufacture and sale thereof in the State of

Washington, and in the United States of America, and in connection with the sale thereof has availed himself of the opportunity granted him as a citizen of the United States, of using the United States mails, and the business of the manufacture and sale of Dolphin's Natural Barks has become and now is of great consequence to the people of the United States.

III.

That on or about May 21, 1941, the Plaintiff received from the Postmaster General of the United States, through his Solicitor, a Memorandum of charges, charging the Plaintiff with the fraudulent [2] use of the United States mails in the sale and advertising of Dolphin's Natural Barks; and that said order cited Byron J. Dolphin to appear and show cause, at Washington, D. C., why a fraud order should not be issued against him.

IV.

That the Plaintiff immediately caused, through his attorney, a request to be served upon the Post Office Department, requesting that the matter be transferred to Seattle, Washington, where he would have the privilege of making a proper defense to said fraud charges; that his request for a transfer of said hearing was promptly denied, and thereafter this Plaintiff made reply to said citation denying any charge of fraud on his part in the sale of Dolphin's Natural Barks, which is a liquid remedy derived from natural barks, and forwarded

to said Department numerous affidavits and letters of persons who had used Dolphin's Natural Barks, and also made showing that he was unable to attend the hearing at Washington, D. C.

V.

That apparently on June 12, 1941, the hearing was held at Washington, D. C., and a report thereof was forwarded to the Plaintiff, who promptly denied the statements of the Post Office Inspector and others, and filed additional testimonials from divers persons who had used said remedy, and denied further that he had used any advertisement that was unjustified or set forth any false statements as to the value of the eye remedy.

VI.

That thereafter, as appears, on September 5, 1941, Vincent M. Miles, as Solicitor, made findings of fact and conclusions, a copy of which is attached hereto, made a part hereof and marked Exhibit "A"; that thereupon, Frank C. Walker, the Postmaster General of the United States of America, prepared Fraud Order No. 16215, [3] and the same was forwarded to the attorney for this Plaintiff; that a copy of said order is attached hereto, made a part hereof, and marked Exhibit "B".

VII.

That by said order the Plaintiff was refused the right to use the United States mails either in the business of the sale of his eye remedy or to use the

same as a private citizen in private mail, and the Postmaster at Seattle, Washington, was directed to seize all mails addressed to Byron J. Dolphin or B. J. Dolphin, or to Dolphin's Natural Barks, and to mark the same, "Fraudulent: Mail to this address returned by order of Postmaster General", and if said letters could not be returned to the senders thereof, that they should be returned to the dead letter office, marked "Fraudulent."

VIII.

That by reason of said order, George E. Starr, the Postmaster at Seattle, Washington, has seized all mails addressed to Byron J. Dolphin, B. J. Dolphin or Dolphin's Natural Barks and is holding the same or has returned the same according to said order, and this Plaintiff is suffering irreparable injury thereby.

IX.

That the findings of the Solicitor for the Post Office Department and the order of the Postmaster General based thereon, are unlawful and not based upon facts and are arbitrary and capricious, as is shown by the findings of the Solicitor upon which said order was based; that the Solicitor quoted from purported pamphlets, said quotations appearing on page 3 of his said findings, and on page 4 thereof, and states the same to be facts, and the testimony of the government agent who offered the circulars in evidence stated that he had received the said circular through the mails; that in truth and fact

the circular referred to has not been used [4] by the Plaintiff for more than a year prior to the date of the entry of said order, and the circular received by the Post Office Inspector who testified, was handed to him in person just prior to the commencement of this action by the Plaintiff, who informed him that the circular was not in use, although the circular sets forth facts and no false statements.

X.

That the testimony of the medical doctor as is quoted in Exhibit "A" appearing on page 6, stated that among other things the Dolphin's eye drops were said to be able to cure cancer; that no such statement was ever made in any circular and does not appear in any circular attached to the record of testimony; that in addition thereto, it was stated that the remedy would not aid astigmatism, but statements of persons having been relieved of astigmatism by the eye remedy manufactured by the Plaintiff were forwarded to the Department.

XI.

That in addition thereto, the Solicitor refused to take into consideration or consider the affidavit and statements of persons who had been relieved and cured of serious eye conditions by reason of Dolphin's eye remedy; that he also refused to consider the testimony of chiropractors and naturopaths and only considered a statement from a doctor, who, without doubt, had special interest in the preven-

tion of the sale of the eye remedy, and he stated that they were lay persons and not entitled to consideration.

XII.

That Plaintiff has never at any time made any fraudulent statement with regard to his eye remedy and has never advocated that it would do anything that persons who had used it did not claim it had done for them; that the Plaintiff has at all times cooperated with and followed the instructions as given him by [5] the United States Food and Drug Administration, and has attempted at all times to and has complied with all laws of the United States of America; that the said remedy has been analyzed by the Pure Food and Drug Administration of the State of Washington, and pronounced harmless; that Plaintiff has always sought, and followed, any suggestions of the United States Food and Drug Administration, and has never refused to comply with any order, contrary to the statements made by the Solicitor in his findings.

XIII.

That the entire proceeding before the Solicitor was unfair and did not conform to the true facts, and by reason thereof, this Plaintiff is being deprived of his constitutional rights to the use of the mails and to the distribution of a remedy that is well-known to be of great benefit; that the acts of the Solicitor and of all the witnesses were capricious and arbitrary and intended solely to destroy

the name of the Plaintiff and his business, and unless restrained, the order of the Postmaster General now in force by the Postmaster at Seattle, the Plaintiff's business will be ruined, and the Plaintiff has no plain, speedy or adequate remedy at law; that the entire proceeding is unconstitutional and in violation of the rights of Plaintiff.

Wherefore, Plaintiff prays that the proceedings of the Solicitor and of the Postmaster General be reviewed, and that he have the privilege of a fair and just hearing, and that the Postmaster, George E. Starr, of Seattle, Washington, be restrained from in any manner enforcing the order of the Postmaster General, under date of September 17, 1941, and that the Plaintiff have such other and further relief as to the Court shall seem just and equitable.

EDGAR S. HADLEY

Attorney for the Plaintiff [8]

United States of America,
Western District of Washington,
Northern Division—ss.

Byron J. Dolphin, also known as B. J. Dolphin, the manufacturer of Dolphin's Natural Barks, being first duly sworn on oath, deposes and says: That he is the Plaintiff above named; that he has read the within and foregoing Complaint, knows the contents thereof and believes the same to be true.

BYRON J. DOLPHIN.

Subscribed and sworn to before me this 10th day of October, 1941.

[Seal] EDGAR S. HADLEY,

Notary Public in and for the State of Washington,
residing at Seattle. [7]

EXHIBIT A

Post Office Department
Office of the Solicitor
Washington

September 5, 1941.

In the Matter of Charges That DOLPHIN'S NATURAL BARKS, BYRON J. DOLPHIN, and B. J. DOLPHIN, at Seattle, Washington, are engaged in conducting a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises, in violation of 39 U. S. Code 259 and 732 (Sections 3929 and 4041 of the Revised Statutes, as amended).

MEMORANDUM FOR THE POSTMASTER
GENERAL EMBODYING A FINDING OF
FACT AND RECOMMENDING THE ISSU-
ANCE OF A FRAUD ORDER.

Under date of May 17, 1941, the above-named concern and party were forwarded copy of a memorandum of charges on file in this office and called

upon to show cause on June 12, 1941, why a fraud order should not be issued against him. The citation was delivered to Mr. Byron J. Dolphin, the respondent, on May 21, 1941. On June 2, 1941, Mr. Edgar S. Hadley, Attorney at Law, of Seattle, Washington, addressed a letter to this office with which he transmitted the answer of the respondent and also requested that the matter be transferred to Seattle, Washington, for hearing at that point. He was promptly advised that it was not practicable to transfer the hearing as requested. With the respondent's answer there was also submitted as exhibits a number of statements from users of the product involved in this case containing expressions of satisfaction with the product. The hearing in this [8] matter was held on June 12, 1941, at which there appeared and testified under oath the post office inspector who investigated the case, a qualified government chemist who analyzed the product involved, and a doctor of medicine. The transcript of the testimony taken at this hearing was subsequently submitted to the respondent through his attorney and on August 8, 1941, an affidavit by the respondent and certain exhibits for consideration in connection with the record were submitted by respondent's counsel. The stenographic transcript of the testimony taken at this hearing, the evidence received at the hearing, the answer of the respondent, and various exhibits and letters submitted by him, together with the supplemental document concerning the transcript submitted by the respondent,

have all been carefully examined and are submitted herewith, and are, by this reference, hereby made a part hereof.

From this examination I find the facts to be as follows:

Under the names set forth in the caption of this memorandum, Mr. Byron J. Dolphin is engaged in the advertisement and sale through the mails of a preparation called "Dolphin's Natural Barks" as a treatment for various conditions and diseases of the eye. The memorandum of charges served upon the respondent alleges that the following false and fraudulent pretenses, representations and promises have been made in offering said product for sale through the mails: [9]

That the said preparation, when used as directed, will cure ailments of the eye "such as" pterygium, "scums, growths, astigmatism," and will be beneficial in cases of cataracts;

That the said preparation, when used as directed, will cure "granulated lids and ulcers" of the eye;

That the use of the said preparation as directed will restore the sight to persons who are practically blind;

That the use of the said preparation as directed will "keep" the eyes of users "well and healthy" regardless of the age or physical condition of the user; and

That all users of the said preparation as directed will obtain the same or similar results

as those described in the alleged testimonials employed in the advertising literature of the said concern and party.

According to the testimony of the post office inspector who investigated this matter, the mail order enterprise was started in September 1938, by Mr. Dolphin, and is being continued at the present time. Advertisements are placed in various publications circulating through the mails soliciting remittances as the purchase price for the product. A number of such advertisements were received in evidence, one of which (Government Exhibit 1-C) reads as follows:

Another Great Discovery

Dolphin's natural barks, the wonderful drops for the eye. They restored my sight. I was practically blind for years with granulated lids and ulcers. Ask your health food store, or write us.

DOLPHIN'S NATURAL BARKS

318-102nd S.W.

Seattle, Wash.

Persons who make inquiry as a result of the foregoing and similar advertisements are sent printed circular matter containing statements [10] concerning the product and also a number of alleged testimonial letters from users thereof. One of these circulars received through the mails on May 23, 1941, is entitled "Guide to Sight" and was received in evidence as Government Exhibit 5-E. Among other things, this circular contains the following statements:

FRIENDS

These few lines are printed and circulated for the benefit of those who are so unfortunate as to be afflicted with disease or deformity of the eyes.* If it should come into the hands of one not so afflicted, please pass it on for as you know, we should do unto others as we would have them do unto us.

This information is to inform you that many ailments of the eye, if not all, can be cured or helped by the Cell Food Method.* For years I had granulated lids and ulcers at the same time. The doctors cauterized them with carbolic acid and nearly ruined them for good, in so much they wanted to take one of them out. I refused and in a miraculous way the Good Lord showed me how to discover an eye drop that would cure me, made from herbs and barks, hence the name Dolphin's Natural Barks, the wonderful Cell Food Drops. It has also cured other ailments such as Petrigum Sties, Scums, Growth, Astigmatism, Weak Watery eyes and it has been beneficial in cases of cataracts.* Of course, under the law I am forbidden to say what it will do, notwithstanding the fact that many are being relieved if not cured entirely.*

So if you are suffering, get in touch with me at once and keep the two little friends you have well and healthy,* for it is a life of misery without them.

*Underscoring supplied.

Alleged testimonial letters printed in this circular report that through its use the product has completely cleared up "bloody weblike growth" over the eye and restored it to "perfect condition"; restored eyes afflicted with "severe eye trouble" to normal; "entirely" "cured" "a growth on the inside of the upper lid" of the eyes; cured "granulated [11] eyelids"; cured astigmatism; kept the eyes "well and healthy" and "perfect"; relieved "cataract"; strengthened the sight so that a person could read without glasses; restored a person "very nearly blind" to good sight, and accomplished other similar results.

According to the sworn testimony of the government chemist who analyzed "Dolphin's Natural Barks", it consists of an aqueous liquid containing traces of iron, calcium, magnesium, aluminum, sodium and potassium, and nothing else. Despite the claim of the promoter on the label of his product that it is manufactured from "tamarack bark" and "oak bark", no tannin, which is present in all extracts from the barks of trees, was found in the product by the chemist. The directions for use of the product are as follows:

Two to five drops in eyes, night and morning.

Caution: If eyes are in bad condition they may sting. Continue use of drops and sting will disappear.

In severe cases the product is to be placed in the eye "three times a day". No liquor is to be used during treatment.

According to the testimony of the physician at the hearing, "Dolphin's Natural Barks" contains ingredients which are well known and have been used for various purposes in varying strengths by the medical profession, and their limitations have been definitely established. [12]

The medical testimony shows that diseases and conditions of the eye are due to a number of causes and require individualized diagnosis and treatment. Some of the diseases of the eye are irreparable by any method of treatment known to the medical profession, including surgery. In some instances certain progressive conditions may be eliminated by surgery, which otherwise might continue until complete loss of sight occurs. Certain malignant tumorous growths, which not uncommonly affect the eye, may, if not promptly and properly treated, even result in loss of life, according to the testimony of the medical expert. Pterygium, one of the conditions mentioned in respondent's advertising matter, is a growth coming up over the cornea, generally from the inner side of the eyeball. "Growths" also mentioned in the advertising matter include tumors, deep ulcers, cancer, sarcoma, as well as pterygium. The only known method of removing such growths, according to the medical testimony, is by surgery.

Astigmatism is a condition in which the eyeball is bent or assumes an abnormal curvature, particularly of the anterior portion or cornea. The cause of this condition is unknown and changes with the advance of age. The proper treatment consists in

giving glasses to offset the improper curvature of the cornea so that the light rays focus upon the proper area in the retina of the eye. The application of "Dolphin's Natural Barks" to the eyes in accordance with the directions of the promoter would, according to the testimony of the physician in this [13] case, have no effect whatsoever upon the sight of persons suffering from astigmatism. Granulated lids or trachoma is an infectious disease of the eye due to a virus. This condition is cured in most cases by the use of sulfanilimide, according to the medical testimony. Prior to the discovery of sulfanilimide, trachoma usually ran a progressive course, sometimes clearing up on its own accord in the course of years, and at other times resulting in blindness or partial blindness. Systematic diseases such as diabetes, syphilis and others, frequently cause decreased vision and dimness of sight. Certain dietary insufficiencies frequently cause a deficiency of sight and proper treatment of the same necessitates the administration of the missing vitamins or minerals in the diet. Diminution of sight due to systemic diseases requires treatment of the systemic disease, following which normal vision often results. According to the medical testimony, no systemic disease or local condition which results in defective eyesight would be altered in any manner by use of "Dolphin's Natural Barks". Aside from some slight antiseptic and astringent effects, the product sold in this case would not have any practical effects in the treatment of infections of the

external area of the eyeball. Certain minor conditions of the eye may be alleviated or eliminated through the natural processes of the body without treatment of any kind. Any diseased condition of the eye requiring treatment would not be materially benefited by use of "Dolphin's Natural Barks" as directed. The testimony before me shows that [14] this preparation will not cure ailments of the eye such as pterygium, scums, growths, astigmatism, nor will it be beneficial in cases of cataracts. The testimony before me further shows that the product will not cure granulated lids and ulcers of the eye as claimed, nor will it restore sight to persons who are practically blind. Aside from the slight anti-septic and astringent effects, the preparation will not keep the eyes of users "well and healthy" as promised. Furthermore, the evidence shows that the alleged beneficial results described in the testimonials employed in the advertising matter in this scheme will not and cannot be truthfully promised users of the product.

The promoter of this enterprise has been repeatedly warned over a period of years by the United States Food and Drug Administration that the claims made by him could not be substantiated by the facts and that the printing of such claims on the label would result in his product being misbranded. Despite these repeated warnings, the promoter nevertheless continued the use of such representations.

The affidavits submitted by the respondent from users of the product are, with one exception, all

from lay persons, chiropractors or naturopaths. The statement from the only doctor of medicine submitted recommends use of the product "in all minor eye troubles". The reports of lay users, chiropractors and naturopaths can be given little, if any, weight since the writers thereof are not qualified by training and [15] experience to diagnose diseases and conditions of the eye and prescribe therefor, nor are such persons qualified to testify as to the therapeutic effects of drugs. Mr. Dolphin is neither a physician, chemist nor pharmacist and no person with those qualifications is connected with the enterprise. He claims to have discovered the product a number of years ago in an attempt to cure himself of ulcers and granulated eyelids. Prior to his entrance into this business he was engaged in the mercantile business and also worked in the flour mills in and around Minneapolis, Minnesota. This scheme is conducted from Mr. Dolphin's residence where he manufactures the product on an electric stove and strains it through several thicknesses of filter paper. The promoter wears eyeglasses in his daily life.

The evidence before me shows that the representations employed in the solicitation of money through the mails in this enterprise are false and fraudulent, and I so find.

I therefore recommend that a fraud order be issued against Dolphin's Natural Barks, Byron J. Dolphin, B. J. Dolphin, and their officers and agents as such, at Seattle, Washington.

(Signed) VINCENT M. MILES,

Solicitor. [16]

EXHIBIT B

Post Office Department
Washington

Sep 17 1941

Order No. 16215

It having been made to appear to the Postmaster General, upon evidence satisfactory to him, that Dolphin's Natural Barks, Byron J. Dolphin, B. J. Dolphin, and their officers and agents as such, at Seattle, Washington, are engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations, and promises, in violation of sections 259 and 732 of title 39, United States Code, said evidence being more fully described in the memorandum of the Solicitor for the Post Office Department of the date of September 5, 1941, and by authority vested in the Postmaster General by said laws the Postmaster General hereby forbids you to pay any postal money order drawn to the order of said concern & parties and you are hereby directed to inform the remitter of any such postal money order that payment thereof has been forbidden, and that the amount thereof will be returned upon the presentation of the original order or a duplicate thereof applied for and obtained under the regulations of the Department.

And you are hereby instructed to return all letters, whether registered or not, and other mail matter which shall arrive at your office directed to the said concern & parties to the postmasters at

the offices at which they were originally mailed, to be delivered to the senders thereof, with the words "Fraudulent: Mail to this address returned by order of Postmaster General" plainly written or stamped upon the outside of such letters or matter. Where there is nothing to indicate who are the senders of letters not registered, or other matter, you are directed to send such letters and matter to the Division of Dead Letters with the words "Fraudulent: Mail to this address returned by order of Postmaster General" plainly written or stamped thereon, to be disposed of as other dead matter under the laws and regulations applicable thereto.

(Case No. 36640-F)

(Signed) FRANK C. WALKER

Postmaster General.

To the Postmaster.

Seattle, Washington. [17]

[Title of District Court and Cause.]

SUMMONS IN A CIVIL ACTION

To the above named Defendant:

You are hereby summoned and required to serve upon E. S. Hadley, plaintiff's attorney, whose address, 802 Lowman Bldg., Seattle, Washington, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If

you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal of Court] MILLARD P. THOMAS

Clerk of Court.

By C. R. FITZGERALD

Deputy Clerk.

Date: Oct. 14, 1941.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure. [18]

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 14th day of October, 1941, I received the within summons together with complaint, at Seattle, Wash., and served same upon George E. Starr, Postmaster of the City of Seattle, Washington, October 23, 1941, by serving Emery T. Ringstad, Acting Postmaster of said City, George E. Starr being absent on vacation.

H. W. ALGEO

United States Marshal.

By PATRICK J. BRADLEY

Deputy United States Marshal.

Marshal's Fees

Travel\$.....

Service 2.00

2.00

Subscribed and sworn to before me, a _____,
this _____ day of _____ 19 ____.

[Seal] _____

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

[Endorsed]: Filed Oct. 27, 1941. [19]

[Title of District Court and Cause.]

AFFIDAVIT

State of Washington,
County of King—ss.

Edgar S. Hadley, being first duly sworn on oath, deposes and says: That he is the attorney of record for the above-named Plaintiff, Byron J. Dolphin, sometimes known as B. J. Dolphin, and Dolphin's Natural Barks; that on the 14th day of October, 1941, at Seattle, Washington, he duly mailed a copy of the Complaint as filed in this action, together with a copy of the Summons as issued by the Clerk of the District Court of the United States, Western District of Washington, Northern Division, to Frank C. Walker, Postmaster General of the United States of America, at his address at Washington, D. C.; that said Summons and Complaint was enclosed in an envelope properly addressed to the said Frank C. Walker, marked "Registered Mail" and deposited in the United States mail, with postage prepaid thereon.

EDGAR S. HADLEY.

Subscribed and sworn to before me this 14th day of October, 1941.

(Seal) LOUIS E. SHELA,
Notary Public in and for the State of Washington,
residing at Seattle. [20]

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes now the defendant herein by and through J. Charles Dennis, United States Attorney for the Western District of Washington, and Gerald Shucklin, Assistant United States Attorney for said District, and moves the court to dismiss the above entitled action on the following grounds:

I.

Lack of jurisdiction over the subject matter.

II.

Lack of jurisdiction over the person.

III.

Improper venue.

IV.

Insufficiency of process.

V.

Insufficiency of service of process.

VI.

Failure to state a claim upon which relief can be granted.

J. CHARLES DENNIS,
United States Attorney.
GERALD SHUCKLIN,
Assistant United States
Attorney.

Received a copy of the within Motion to Dismiss
this 5th day of January, 1942.

EDGAR S. HADLEY,
Attorney for Plf.

[Endorsed]: Filed Jan. 13, 1942. [23]

United States District Court, Western District of
Washington, Northern Division.

No. 429

BYRON J. DOLPHIN, sometimes known as
B. J. Dolphin, and Dolphin's Natural Barks,
Plaintiff,

vs.

GEORGE E. STARR, United States Postmas-
ter at Seattle, King County, Washington,
Defendant.

ORDER OF DISMISSAL

The above cause having come on regularly for
hearing on the motion of the defendant herein to

dismiss the action on the grounds stated in the Motion on file herein on March 2d and on March 9th, 1942, the plaintiff being represented by his attorney Edgar S. Hadley, and the defendant by his attorneys J. Charles Dennis, United States Attorney, and Gerald Shucklin, Assistant United States Attorney, and it appearing to the Court that the acts alleged to have been done by George E. Starr, Postmaster at Seattle, Washington, were done at all times only pursuant to the directions and instructions of the Postmaster General of the United States of America under the terms of the "fraud order", and it further appearing to the Court that the Postmaster General of the United States is a necessary party, the Court hereby finds that there is a want of a necessary party hereto; now therefore, it is hereby

Ordered, Adjudged and Decreed that the motion to dismiss the action be, and the same is hereby granted and the said cause is hereby dismissed without costs to either party. [24]

To which plaintiff excepts—

Exception allowed.

Done in open court this 16th day of March, 1942.

JOHN C. BOWEN,

United States District Judge.

Presented by:

GERALD SHUCKLIN,

Asst. United States Attorney.

Approved as to form:

EDGAR S. HADLEY,

Attorney for Plaintiff

GERALD SHUCKLIN,

Asst. U. S. Atty.

[Endorsed]: Filed Mar. 16, 1942. [25]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Comes now the Plaintiff, Byron J. Dolphin, sometimes known as B. J. Dolphin, and Dolphin's Natural Barks, by and through Edgar S. Hadley, his attorney, and hereby gives notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain order signed and entered on the 16th day of March, 1942, by the above entitled Court, said order dismissing the action of the Plaintiff and denying his right to maintain said action.

Dated this 13th day of April, 1942.

EDGAR S. HADLEY,

Attorney for Plaintiff.

Copy received this 13th day of April, 1942.

J. CHARLES DENNIS,

U. S. Atty.

Attorney for Defendant.

[Endorsed]: Filed April 13, 1942. [26]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

The Court erred:

1. In sustaining the motion of the Defendant upon the ground that the Plaintiff could not maintain this action against the Defendant, George E. Starr.

2. The Court erred in holding that the Postmaster General of the United States was a necessary party to said action.

3. The Court erred in dismissing the Plaintiff's cause of action.

EDGAR S. HADLEY,
Attorney for Plaintiff.

Presented by:

EDGAR S. HADLEY,
Attorney for Plaintiff,
802 Lowman Building,
Seattle, Washington.

Received a copy of the within Assignments this
13th day of April, 1942.

J. CHARLES DENNIS,
U. S. Atty.
Attorney for Defendant.

[Endorsed]: Filed Apr. 13, 1942. [27]

[Title of District Court and Cause.]

PRAECIPE OF APPELLANT FOR TRANS-
SCRIPT OF RECORD ON APPEAL

To the Clerk of the above entitled Court:

You will please prepare and duly authenticate the following portions of the record in the above entitled cause for appeal of the appellant, heretofore allowed, to the United States Circuit Court of Appeals for the Ninth Circuit.

1. The Complaint and Petition of the Plaintiff.
2. The Motion of the Defendant to dismiss.
3. The Order of Dismissal.
4. Petition for Appeal.
5. Order Allowing Appeal.
6. Notice of Appeal.
7. Assignment of Error.
8. Affidavit of mailing copy of the Summons and Complaint to the Postmaster General.
9. Receipts by the Postmaster General of Registered copy of Summons and Complaint in this action.
10. Summons.
11. This Praecipe.

EDGAR S. HADLEY,
Attorney for Plaintiff.

Received a copy of the within Praeceptum this 13th day of April, 1942.

J. CHARLES DENNIS,

U. S. Atty.

Attorney for Defendant.

[Endorsed]: Filed Apr. 13, 1942. [28]

[Title of District Court and Cause.]

COST BOND

Defendant:

Know All Men by These Presents: That We, Byron J. Dolphin, sometimes known as B. J. Dolphin and Dolphin's Natural Barks, as Principal, and United States Fidelity and Guaranty Company, a corporation of Baltimore, Maryland, authorized to do the business of surety in the State of Washington, as surety, acknowledge ourselves to be jointly indebted to George E. Starr, United States Postmaster at Seattle, King County, Washington, above named defendant, in the above entitled cause, in the sum of Two Hundred Fifty and no/100 (\$250.00) Dollars, conditioned that, whereas, on the 16th day of March, 1942, in the District Court of the United States for the Western District of Washington, Northern Division, in a suit pending in that court wherein Byron Barks, was plaintiff, and George E. Starr, United States Postmaster at

Seattle, King County, Washington, was defendant, a decree of dismissal was entered against the said plaintiff, and the said plaintiff having filed in the office of the Clerk of the said District Court a notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, in the State of California.

Now, Therefore, the condition of the above obligation is such, that if the said Byron J. Dolphin, sometimes known as B. J. Dolphin, and Dolphin's Natural Barks, shall prosecute his appeal to effect and answer all costs, if the appeal is dismissed or by judgment affirmed, or all such costs as the appellate court may award if the judgment is modified, then the above obligation is void, else to remain in full force and effect.

Sealed with our seals and dated this 22nd day of April, 1942.

(Signed)

BYRON J. DOLPHIN

United States Fidelity and
Guaranty Company.

(Signed)

D. H. McCALLISTER,
Attorney-in-fact.

State of Washington,
County of King—ss.

On this 22nd day of April, 1942, before me personally appeared D. H. McCollister, to me known to be the Attorney-in-fact of the corporation that

executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

(Seal)

(Signed) M. GUY WORTHING,

Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed Apr. 23, 1942

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD.

United States of America,
Western District of Washington—ss.

I, Judson W. Shorett, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 28, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel

filed and shown herein, as the same remain of record and on file in my office at Seattle, and that the same constitute the record on appeal herein from the Order of Dismissal entered by the Court on March 16, 1942, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerk's fees (Act. Feb. 11, 1925) for making record, certificate or return, 15 folios at 15c and 51 folios at 5c.....	\$ 4.80
Appeal Fee	5.00
Certificate of Clerk to Transcript.....	.50
	<hr/>
	\$10.30

I hereby certify that the above stated amount has been paid to me by the attorney for the appellant.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 8th day of May, 1942.

JUDSON W. SHORETT,
Clerk, United States District
Court, Western District of
Washington.

By TRUMAN EGGER,
Deputy.

[Endorsed]: No. 10135. United States Circuit Court of Appeals for the Ninth Circuit. Byron J. Dolphin, sometimes known as B. J. Dolphin and Dolphin's Natural Barks, Appellant, vs. George E. Starr, United States Postmaster at Seattle, King County, Washington, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed May 11, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
9th Circuit.

No. 10135

BYRON J. DOLPHIN, Sometimes known as
B. J. Dolphin, and Dolphin's Natural Barks,
Plaintiff,

vs.

GEORGE E. STARR, United States Post-
master at Seattle, King County, Washington,
Defendant.

DESIGNATION OF POINTS ADOPTED
ON APPEAL

To the Clerk of the United States Circuit Court of
Appeals, 9th Circuit:

The Appellant here designates the Assignment

of Errors as appears in the record as covering all points to be argued in this case.

EDGAR S. HADLEY,
Attorney for Appellant.

Received a copy of the within Designation this 18th day of May, 1942.

J. CHARLES DENNIS,
Attorney for Defendant.

[Endorsed]: Filed May 19, 1942. Paul P. O'Brien,
Clerk.